

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 2nd day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. BARRINGTON D. PARKER,
Circuit Judges.

Roni Wijaya,

Petitioner,

-v.-

No. 05-4877-ag
NAC

Alberto R. Gonzales, Attorney General of the United States
Respondent.

FOR PETITIONER: H. Raymond Fasano, Madeo & Fasano, New York, N.Y.

FOR RESPONDENT: Margaret M. Chiara, United States Attorney, Paul D. Lochner,
Assistant United States Attorney, Marquette, Mich.

UPON DUE CONSIDERATION, of this petition for review of the Board of Immigration Appeals ("BIA") decision it is ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Roni Wijaya, a citizen of Indonesia, petitions for review the BIA's August 16, 2005 denial of his motion to reopen his removal proceedings. *In re Wijaya, Roni*, No. A 96 426 957

1 (B.I.A. Aug. 16, 2005). We assume the parties' familiarity with the facts and procedural history
2 of this case.

3 This Court reviews the BIA's denial of a motion to reopen for abuse of discretion. *See*
4 *Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005). An abuse of discretion may be found where the
5 BIA's decision "provides no rational explanation, inexplicably departs from established policies,
6 is devoid of any reasoning, or contains only summary or conclusory statements; that is to say,
7 where the Board has acted in an arbitrary or capricious manner." *Ke Zhen Zhao v. DOJ*, 265 F.3d
8 83, 93 (2d Cir. 2001) (internal citations omitted).

9 The BIA did not abuse its discretion in denying Wijaya's motion to reopen. Wijaya's
10 claim was time barred and the BIA appropriately determined that Wijaya's submission of new
11 evidence did not establish that he has a clear probability of being persecuted if he returns to
12 Indonesia. The BIA used the appropriate standard for withholding of removal and provided a
13 rational explanation in its denial of the motion to reopen.

14 For the foregoing reasons, the petition for review is DENIED. The pending motion for a
15 stay of removal in this petition is DENIED as moot. Any pending request for oral argument in
16 this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and
17 Second Circuit Local Rule 34(d)(1).

18 FOR THE COURT:
19 Roseann B. MacKechnie, Clerk

20 By: _____
21 Oliva M. George, Deputy Clerk
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